"Culpable homicide is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation causes the death of the person who gave the provocation."

It is conceded that section 106 of the Evidence Ordinance places the burden or onus on a person accused of an offence under section 300 of the Penal Code to prove the existence of circumstances bringing the case within any special exception of section 300 but it is contended that an accused person discharges that burden or onus if a reasonable doubt is raised in the minds of the jury as to whether or not the necessary factors exist. The case of *Soh Cheow Hor* v. *R.*[1] is relied on in support of this proposition. In that case Rose C.J. delivering the judgment of the Singapore Court of Criminal Appeal said at page 254:—

"Whatever the position may have been in the past, it appears now to be the accepted rule that when an accused person endeavours to bring himself within one of the exceptions, it is sufficient for his purpose if a reasonable doubt is raised in the minds of the jury as to whether or not the necessary factors exist. If as a result of the evidence of the whole case taken and considered together, the jury find themselves in genuine doubt as to whether or not the case falls within one of the exceptions, then their verdict on the point must be in favour of the accused. . . .".

The trial judge directed the jury as follows:—

"If you think that the accused was gravely and suddenly provoked that he was deprived of his power of self-control, it will be proper for you to convict on culpable homicide not amounting to murder. If on the other hand having weighed all the evidence you are convinced that he is not covered by this exception, then of course it is murder."

It is contended on behalf of the appellant that this direction amounts to a misdirection in that it places too high an onus on an accused person who endeavours to bring himself within Exception 1 of section 300 of the Penal Code. We disagree with the contention. In our opinion the language used sufficiently conveys to the jury that if they are left in genuine doubt as to the existence or non-existence of all the factors relating to the issue of grave and sudden provocation, they must find a verdict of guilty of culpable homicide not amounting to murder.

In any event, assuming there was a misdirection, we are of the opinion that on all the evidence, a reasonable jury properly directed on this point, would be left in no genuine doubt that the provocative conduct and acts of the deceased as related by the appellant in his statement from the dock could not amount to provocation under Exception 1 of section 300 of the Penal Code.

The appeal is accordingly dismissed.

Appeal dismissed.

Solicitors: *David Marshall.*

CHAMPION MOTORS (M) LTD. v. TAN PU TAY

[A.C.J. (Pawan Ahmad J.) November 20, 1968]
[Malacca — Civil Appeal No. 6 of 1966]

Landlord and Tenant — Controlled premises — Landlord requiring premises for own occupation — Who would suffer greater hardship — Notice to quit — Address stated wrongly — Whether invalid — Control of Rent Ordinance, 1956, s. 12(1)(f).

The plaintiffs were the owners of the premises known as 14 and 14-A Pengkalan Rama Road, Malacca. The plaintiffs occupied 14 Pengkalan Rama Road and carried on a business dealing in motor vehicles. The defendant occupied 14-A Pengkalan Rama Road as the plaintiffs' tenant and the premises were rent-controlled.

The plaintiffs demanded of the defendant possession of 14-A Pengkalan Rama Road having given the necessary one year notice to quit on the ground that they required the premises for the purpose of demolishing it and building in its place a new vehicle storage building for increased storage facilities in connection with their motor vehicles business. The notice to quit described the premises in question erroneously as 14 Pengkalan Rama Road instead of 14-A Pengkalan Rama Road.

The learned magistrate who heard the case held that (i) the notice to quit was invalid because it erroneously described the premises and (ii) the plaintiffs had failed to discharge the burden of proving that other accommodation was available for the tenant. The plaintiffs appealed.

Held, dismissing the appeal: (1) as the defendant held only the house under the plaintiffs, he could not have been misled by the mistake in the address given in the notice. The learned magistrate was, therefore, wrong in holding that the notice to quit was invalid. *Re Cox & Ors.*[1] applied;

(2) the onus of proving that alternative accommodation was available for the tenant was upon the landlord and on the evidence adduced at the hearing the plaintiffs had failed to discharge this burden. On the other hand the defendant had discharged the burden that greater hardship would be caused by granting the order than by refusing it.

Perak Hauliers Ltd. v. *The Cycle & Carriage Co. Ltd.*[2] applied.

Cases referred to:—

(1) *Re Cox & Ors.* (1802), 4 Esp. 185; 170 E.R. 685.

(2) *Perak Hauliers Ltd.* v. *The Cycle & Carriage Co. Ltd.* [1962] M.L.J. 7 at p. 9.

CIVIL APPEAL.

D.A. Devadason for the appellants.

Yau Meng Fai for the respondent.

Cur. Adv. Vult.

Pawan Ahmad J.: This is an appeal by the plaintiffs against the decision of the learned magistrate for dismissing with costs their claim for recovery of possession of premises No. 14-A, Pengkalan Rama Road, Malacca, from the defendant.

The plaintiffs are a limited company dealing in the business of motor vehicles at No. 14, Pengkalan Rama Road, Malacca, and they are the landlords of premises No. 14-A, Pengkalan

Rama Road. Both these premises are on one piece of land purchased by the plaintiffs in 1961. In February 1964 the plaintiffs through their solicitors served a notice to quit on the defendant by A.R. registered post (Exhibit P.1.). The reason given in the notice is that the plaintiffs wanted vacant possession of the premises occupied by the defendant for the purpose of carrying on their business. The defendant, however, refused to give up possession of the premises.

At the hearing in the magistrate's court both parties agreed that there was only one issue to be determined by the learned magistrate and this was whether greater hardship would be caused by granting an order or judgment than by refusing it under section 12(1)(f) of the Control of Rent Ordinance 1956. The said provision reads as follows:—

"12. (1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely —

.. ..

(f) where the owner of the premises reasonably requires the same for occupation by himself or any member of his family or any person for whom he holds the premises in trust, and —

(i) there has been no change by purchase in the ownership of the premises since the fifteenth day of February, 1942; or

(ii) the tenancy has been determined by not less than one year's notice to quit and there has been no change by the purchase in the ownership of the premises within one year next preceding the date of such notice:

Provided that an order or judgment shall not be made or given on any ground specified in this paragraph if the court is satisfied that, having regard to all the circumstances of the case, including the question of whether other accommodation is available for the owner or the tenant, greater hardship would be caused by granting an order or judgment than by refusing to grant it:

.. ..".

In this case it is obvious that the plaintiffs reasonably require the premises for the purpose of demolishing it and building in its place a new vehicle storage building for increased storage facilities in connection with their motor vehicles business as supported by exhibit P.2C.

The notice to quit (P.1) in this case was for more than the period of one year. The learned magistrate, however, stated that this notice is invalid because the notice was for premises No. 14, Pengkalan Rama Road, Malacca, whereas the premises in question is No. 14-A, Pengkalan Rama Road, Malacca. In *Re Cox & Ors.*[1] the notice specified "The Waterman's Arms" instead of "The Bricklayer's Arms", yet it was held that the notice was good notice inspite of the error because there was only one house held by the tenant under the landlord and the notice could not therefore have misled him. Similarly, in the present case the defendant holds only one house under the plaintiffs and he therefore could not have been misled by the mistake in the address given in the notice. I therefore find that the learned magistrate was wrong in law in stating that the notice to quit was invalid.

The next point to be considered is whether other accommodation is available for the owner or the tenant. On this matter it appears that the plaintiffs already have one vehicle storage building and that they are using it but they want to put up an additional vehicle storage building at the site of the premises in question for additional storage facilities. The onus of proving that other accommodation is available for the tenant is upon the landlord as stated in *Perak Hauliers Ltd.* v. *The Cycle & Carriage Co. Ltd.*[2] From the evidence adduced at the hearing the learned magistrate found that the plaintiffs failed to discharge this burden and I wholly agree with the finding of the learned magistrate.

Lastly, the defendant and her family have been occupying the said premises for domestic purposes for the last 40 years and they have no other accommodation. On the other hand, the plaintiffs want the premises merely to demolish it and build an additional vehicle storage building. The plaintiffs can still carry on their business without recovering possession of the premises in question as they already have one existing vehicle storage building (Exhibit P.2C). I therefore find that the learned magistrate was right in coming to the conclusion that the defendant had discharged the burden that greater hardship would be caused by granting the order than by refusing it.

The appeal is therefore dismissed with costs.

Appeal dismissed.

Solicitors: *D.A. Devadason; Murphy & Dunbar.*

NADARAJAH v. PUBLIC PROSECUTOR

[A.Cr.J. (Yong J.) December 16, 1968]
[K.L. — Criminal Appeal No. 19 of 1968]

Criminal Law and Procedure — Trial — Quantum of proof required of accused person to rebut prosecution case — Misdirection.

In this case the president of the sessions court had convicted the appellant on a charge of robbery under section 392 of the Penal Code. In his grounds of judgment the learned president said that the defence given by the appellant was unconvincing and that in the circumstances he was inclined to believe the case for the prosecution and he accordingly found the appellant guilty of the charge.

Held, allowing the appeal: the learned president after holding that the appellant had not convinced him of the truth of his explanation, had failed to consider whether it might reasonably be true and probable, although not convinced of its truth. It was impossible to say with certainty that he would have convicted the appellant if he had not misdirected himself on the